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10/026,855	12/20/2001	Andrea Susan Wulz	16,897	1818

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EXAMINER	
REICHLE, KARIN M	
ART UNIT	**PAPER NUMBER**
3761	

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/026,855	WULZ ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 November 2005 and 21 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17,19-26,31-34 and 36-50* is/are pending in the application.

4a) Of the above claim(s) *20,22,32,33,38 and 43* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17,19,21,23-26,31,34,36,37,39-42 and 44-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 November 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2-21-06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *Appendix A*.

DETAILED ACTION

Election/Restrictions

1. Claims 20, 22, 32-33, 38, and 43 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species.

Amendments to the Application

2. The amendment filed 2-21-06 still does not comply with 37 CFR 1.121. For example, with respect to claim 43, all the amendments made to line 2 were not shown. An Appendix A illustrating how claims 38, 40 and 43 should have been submitted to be compliant accompanies this action. Any further response should provide the appropriate corrections.

Specification

Drawings

3. The drawings were received on 11-9-05. The changes proposed in these drawings are approved by the Examiner. However note the PTO-948 which accompanies this action.

Claim Language Interpretation

4. The directional words are defined as set forth on page 6, lines 15-20 and last six lines. "Liquid" and "liquid communication" are defined as set forth on page 6, lines 21-25. "Multilayer laminate" is defined as set forth on page 7, line 24. "Nonwoven", "nonwoven" fabric or web, "region", "area", "spunbonded fibers" and "target area" are defined as set forth at

page 8. "Vapor permeable" is defined as set forth on page 9, second full paragraph. A technique of determining WVTR value is set forth in the paragraph bridging pages 9-10. "Resilient material" is defined as set forth in the paragraph bridging pages 14-15. The terminology "above" and "underlying" have not been explicitly defined. Therefore, according to their usual, i.e. dictionary, definition, "above" is defined as "in or to a higher place" and "underlying" is defined as "to lie or be situated under", "under" is defined as " in or into a position below or beneath something", "below" is defined as "in or to a lower place" and "beneath is "in or to a lower position, below", i.e. such claim terminology does not require positioning directly above or directly beneath or below.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 40-42 and 44-50 are rejected under 35 U.S.C. 102(b) as being anticipated by DiPalma et al '156.

Claims 40-42 and 44-45: See Figures 1-6, col. 2, lines 3-12, col. 3, lines 51-59, col. 5, line 35- col. 6, line 5, col. 7, lines 60-63 and col. 8, lines 19-28, i.e. liquid impermeable, and thereby also repellant, member which is resilient, col. 9, line 3-col. 10, line 14 and the Claim Language Interpretation section, i.e. especially the definitions of "above" and "underlying", i.e. the front waist section, rear waist section and intermediate section are disclosed at col. 2, lines 3-

12, the vapor permeable/liquid impermeable backsheet is 228, the liquid permeable topsheet is 202, the absorbent body is 206, the undulation is 210 and the surge management layer is 214. With regard to the last two lines of claim 40 and claims 41-42, see the portions of '156 cited supra, especially col. 5, lines 48-50. Therefore it is the Examiner's first position that '156 explicitly teaches not only the claimed structure but also the function, capability and property thereof. In any case, since '156 includes at least the claimed structure, it is the Examiner's second position that there is sufficient factual evidence to conclude that the function, property or capability of the claimed structure is also inherent in the same structure of '156 if not already explicitly disclosed thereby, see MPEP 2112.01.

Claims 46-50: See the discussion of the claims supra and the shape of the bulge/undulation 210, i.e. slopes downward in the lateral and longitudinal directions.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 17, 19, 21, 23, 26, 31, 34, 36-37, 39-42 and 44-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer '336 in view of Sauer '300 and Grykiewicz '785.

Claims 17, 19, 21, 26, 31, 34, 36, 37 and 39: See Sauer '336 at Figures, especially 4 and 6-7, col. 8, lines 63-65, col. 9, lines 11-20 and 48-60, col. 10, lines 21-22, 30-51, 60-67, the paragraph bridging cols. 11-12and the first, second and fourth full paragraphs of col. 13, i.e. surfaces which slope downwardly, edges, i.e. lateral or longitudinal upper edges, which are curved, i.e. sloped downwardly, triangular profile, i.e. downwardly sloped surfaces, barriers

which diverge from each other, barriers which define recesses having a depth in a direction away from the longitudinal centerline, col. 13, line 65-col. 14, line 3, i.e. the front waist section is 22, the rear waist section is 24, the intermediate section is 26, the backsheet is 32, the topsheet is 34, the absorbent body is 36, the surge management layer is 54, also see col. 9, lines 39-47, and the undulation of resilient material is 60 which is in a "target area" or zone and has an elevation or height above the absorbent body with downwardly sloping surfaces, see, e.g., Figure 4 again. With respect to the backsheet see col. 6, lines 23-32 which disclose that the backsheet can be certain materials but does not set forth explicitly the claimed WVTR. However, see col. 6, line 64-col. 7, line 35 of Sauer '300, especially lines 29-33, which disclose that the backsheet can be the same materials as that of Sauer '336 or microporous material and certain specific films. Sauer however also does not set forth explicitly the WVTR. Furthermore, see Gryskiewicz '785 at col. 15, lines 17-38 which, at the very least, teach interchangeability of specific films which are the same as those taught by Sauer '300 for sheets of the claimed WVTR and, at the very most, teach those specific films have the claimed WVTR. Therefore, to make the backsheet of Sauer '336 a backsheet of the claimed WVTR instead would be obvious in view of the interchangeability as taught by Sauer '300 and Gryskiewicz. With regard to the undulation of resilient material, it is now claimed that such material is substantially liquid impermeable. The surfaces of such undulation are also claimed as having the function or having the capability or property to direct fluids downwardly towards the absorbent body without passing such through the undulation. The element 60 is clearly described by Sauer as having sloped surfaces which are directed downwardly toward the absorbent body. It is the Examiner's first position that the material of the undulation is liquid impermeable so that liquid may not pass through the

undulation since the portions cited supra, as well as col. 13, lines 55-60, describe the elements 60 as "containment barriers", "containment" is defined by the dictionary is defined as "the act or process of keeping within limits, holding back or holding down, restraining, controlling, checking or halting", "barrier" is defined by dictionary as "a material object or set of objects that separate, demarcate or serve as a barricade" and, e.g., col. 9, lines 1-2, i.e. prevents lateral flow, and col. 14, lines 25-38 of '336 (Note the language "Alternatively" in the sentence following a sentence describing barriers of foam and the alternative being absorbent materials, i.e. an alternative to nonabsorbent materials). In any case, i.e. the Examiner's second position, even if such is not deemed to be explicitly disclosed, to employ liquid impermeable resilient material on the containment barrier element of Sauer '336, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such would better contain, better act as a barrier and/or better prevent flow and the desire by Sauer '336 to do so with elements 60. In so doing, the device taught by the prior art combination would necessarily and inevitably perform the function, capability or property of the last section of claim 17 as now claimed, i.e. direct fluids downwardly without passing such therethrough. See also the Response to Arguments section infra.

Claim 23: see discussion supra. The term "highly breathable" is considered relative and thus, the backsheet of the prior art combination is also considered "highly breathable".

Claims 40-42 and 44-45: See discussion supra. With regard to claims 40-42 and 44-45, it is claimed the resilient material is liquid repellant. See also the paragraph bridging cols. 12-13 of Sauer '336, i.e. the elements 60 may be covered with a hydrophobic material. "Hydrophobic" is defined as "Antagonistic to, shedding, tending not to combine with or incapable of dissolving in

water", i.e. liquid repellant. Therefore, the resilient material of elements 60 is considered to be "fluid repellant", e.g., due to their impermeability and hydrophobicity, see discussion supra.

Claims 46-50: See the discussion of the claims supra as well as the Response to Arguments section infra.

9. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer and Gryskiewicz as applied to claim 23 above, and further in view of Odorzynski et al '341.

Applicant claims the backsheet of a certain WVTR also being a film/spunbond nonwoven laminate. While Sauer '336 at col. 6, lines 23-44 as well as the portions defined supra teach a backsheet of a film/spunbond nonwoven laminate Sauer does not teach the claimed WVTR. See the discussion of Sauer '336 and '300 and Gryskiewicz supra as well as Odorzynski '341 at col. 6, line 47-col. 7, line 18, i.e. interchangeability of films or treated nonwovens with film/spunbond nonwoven laminates of the claimed WVTR. To make the backsheet of Sauer '336 a film/spunbond nonwoven laminate of the claimed WVTR instead would be obvious in view of the interchangeability as taught by Sauer '300, Gryskiewicz and Odorzynski et al.

10. Claims 17, 19, 21, 23-26, 31, 34, 36-37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiPalma et al '156 in view of Odorzynski et al '341.

The '156 reference, see discussion supra, teaches all the claimed structure of claims 17, 19, 21, 23-26, 31, 34, 36-37 and 39 except for the specifics of the backsheet as set forth in claims 17 and 23-26. Note again however col. 10, lines 6-14 of '156, especially lines 6-9 thereof. Note also '341 at col. 3, lines 12-18 and col. 6, line 36-col. 7, line 18, i.e. a backsheet which is vapor permeable, liquid impermeable which also includes the claimed specifics. To make the vapor permeable/liquid impermeable backsheet of '156 the vapor permeable/liquid impermeable

backsheet/baffle of '343, i.e. as claimed, would be obvious, see In re Siebentritt, 54 CCPA 1083, i.e. two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious, i.e. here interchanged structures both function as vapor permeable/liquid impermeable backsheets/baffles. In so doing, the prior art necessarily and inevitably teaches the claimed structure and function, capability and/or property thereof.

Response to Arguments

11. Applicant's remarks of 11-9-05 been considered but are either deemed moot in that the issue discussed has not been reraised or are deemed not persuasive with respect to the prior art in that they are narrower than the prior art teachings, e.g. '336 clearly teaches an undulation in a target area as claimed in claims 17 and 40, see the portions cited supra, or the prior art rejection, i.e. the Examiner is not modifying the prior art as argued by Applicant, i.e. bridging pages 11-12 of the 11-9-05 response. With regard to the arguments with respect to claim 46, it is again noted that the barriers as a whole can have a diverging configuration, the edges of each barrier at the upper surface, i.e. the edges include longitudinal edges, are rounded off, and/or the recessed configurations which have recesses with a depth "away from the longitudinal centerline", i.e. all such features direct fluid away from the center of the article yet maintain fluid within the article. It is noted that claim 46 does not define the dimensions of the sections, including the intermediate section, with regard to overall composite.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 17, 40 and 46. With regard to the rejections with respect to DiPalma, see also MPEP 609.04(b), II, A. 2.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K.M. Reichle

Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
May 12, 2006

36. (Previously Presented) The composite of Claim 17, wherein the at least one undulation provides for the movement of a fluid away from a region of the composite in a longitudinal direction or a lateral direction.

37. (Previously Presented) The composite of Claim 17, wherein the at least one undulation creates at least one hill-like structure.

A 38. (Withdrawn and Currently Amended) The composite of Claim 17 further comprising a vapor barrier, ~~and~~ said vapor barrier ~~is~~ being positioned between the absorbent body and the topsheet.

39. (Previously Presented) The composite of Claim 17, wherein the resilient material comprises a foam-like material, elastomer, thermoplastic, open or closed cell foam, or a plastic composite.

A 40. (Currently Amended) A composite which defines a front waist section, a rear waist section, and an intermediate section which interconnects said front and rear waist sections, each section having one or more regions, said composite comprising:

a) a vapor permeable backsheet;

b) a liquid permeable topsheet;

c) an absorbent body located between said backsheet and said topsheet; and

d) at least one undulation of substantially liquid repellant resilient A material located between said backsheet and said topsheet in a target area ~~[and]~~ above the absorbent body, the undulation of resilient material having an elevation above said absorbent body ~~and cross-sectional profile~~ with ~~substantially liquid repellant~~ sloped surfaces so as to direct fluids downwardly along the sloped surfaces of the undulation to the underlying absorbent body without the liquid passing through the undulation.

41. (Previously Presented) The composite of Claim 40 wherein the intermediate section comprises, at least in part, a crotch region and the resilient material is located in the crotch region of the composite and provides for the direction of fluid away from the crotch region.

42. (Previously Presented) The composite of Claim 41, wherein the at least one undulation provides for the movement of a fluid away from the crotch region of the composite in a longitudinal direction or a lateral direction.

43. (Withdrawn and Currently Amended) The composite of Claim ~~17~~ 40 further comprising a vapor barrier~~, and~~ said vapor barrier ~~is~~ being positioned between the absorbent body and the topsheet.

44. (Previously Presented) The composite of Claim 40, wherein the resilient material comprises a foam-like material, an elastomer, a thermoplastic, an open or closed cell foam, or a plastic composite.

45. (Previously Presented) The composite of Claim 40 further comprising a surge management layer.

46. (Currently Amended) A composite which defines a front waist section, a rear waist section, and an intermediate section which interconnects said front and rear waist sections, each section having one or more regions, said composite comprising:

a) a vapor permeable backsheet;

b) a liquid permeable topsheet;

c) an absorbent body located between said backsheet and said topsheet; and

d) at least one undulation of substantially liquid impermeable resilient material located between said backsheet and said topsheet above the absorbent body wherein